

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 06-0018

STATEMENT OF REASONS OF EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (the "Commission"), the Executive Director hereby provides the Statement of Reasons for the recommendation that the Commission find no reason to believe that violations of the Citizens Clean Elections Act and Commission rules (collectively, the "Act") may have occurred.

I. Procedural Background

On September 20, 2006, Douglas Drury (the "Complainant"), in his capacity as counsel to the campaign of Len Munsil ("Munsil"), a participating candidate for governor, filed a complaint (the "Complaint"), together with supporting documentation, against Janet Napolitano (the "Respondent"), a participating candidate for governor, alleging possible violations of Arizona election law. Exhibit A. On September 25, 2006, Respondent's counsel, Andrew Gordon, filed a reply (the "Reply"), together with supporting documentation, responding to the matters described in the Complaint. Exhibit B. On that same day, Charles Blanchard, counsel for Project for Arizona's Future, Inc. ("PAF"), the Arizona Values Coalition ("AVC") and the Arizona Conservative Trust ("ACT") filed a joint response (collectively, the "Committees") to the allegations made in the Complaint. Exhibit C.

II. Factual Background

The Executive Director finds the following facts are supported by the Complaint, the Reply and the supporting documentation and information provided by the Complainant, Respondent, and counsel to the Committees.

Complainant alleges that an Arizona non-profit corporation named Project for Arizona's Future ("PAF") and two independent expenditure committees named Arizona Conservative Trust ("ACT") and Arizona Values Coalition ("AVC") coordinated with Respondent's campaign to commission a series of auto-dial calls and a website attacking Munsil and to support Respondent's campaign. In support of the allegations, Complainant presents evidence that the principals of PAF, ACT and AVC overlapped and that their activities were coordinated.

Complainant cites documents identifying an individual named Beau Memory ("Memory") as the chairman of AVC. AVC is alleged to have provided funding to ACT for a website and an auto-dial call critical of Munsil. In connection with a matching

funds request by Munsil based on the call, Memory used a fax machine owned by PAF to transmit a copy of the invoice presented to ACT by its vendor. Memory presumably obtained the invoice on account of AVC's role in funding the call.

Also identified in the Complaint are an individual named Seamus Perry ("Perry"), who is referenced as both the treasurer of AVC and an employee of PAF, and another individual named Tom Ziemba ("Ziemba"), referenced as the Executive Director of PAF.

Complainant presents campaign finance report filings indicating that Memory, Perry and Ziemba each worked in connection with the Democratic Party and its candidates during the 2004 election cycle.

Finally, Complainant provides a citation to the March 27, 2006 edition of *The News Reporter* of Whiteville, North Carolina, which reads: "Beau Memory ... headed to Phoenix, Ariz., where Beau will join Gov. Janet Napolitano's 2008 [*sic*] re-election campaign as director of voter contact."

In her Reply, Respondent acknowledges engaging in fund-raising efforts on behalf of PAF, but denies any co-ordination ACT or AVC. Respondent further denies coordinating with or ever employing Memory or Perry.

III. Alleged Violations

A. Possible Campaign Contributions by PAF, ACT or AVC to Respondent

The essence of the Complaint is an allegation that the Committees, jointly and severally, may have made expenditures on behalf of Respondent. Such expenditures are generally permissible if they are made independently of Respondent's campaign. In pertinent part, A.R.S. § 16-901(14) defines "independent expenditures" as follows:

"Independent expenditure" means an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.

Arizona Revised Statutes § 16-901(14) goes on to provide categories of expenditures excluded from the basic definition because they entail coordination between the campaign and the person or entity making the expenditure:

An expenditure is not an independent expenditure if any of the following applies:

- (a) Any officer, member, employee or agent of the political committee making the expenditure is also an officer, member, employee or agent of the committee of the candidate whose election or whose opponent's defeat is being advocated by*

- the expenditure or an agent of the candidate whose election or whose opponent's defeat is being advocated by the expenditure.*
- (b) There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure, including any officer, director, employee or agent of that person.*
 - (c) In the same election the person making the expenditure, including any officer, director, employee or agent of that person, is or has been:*
 - (i) Authorized to raise or expend monies on behalf of the candidate or the candidate's authorized committees.*
 - (ii) Receiving any form of compensation or reimbursement from the candidate, the candidate's committees or the candidate's agent.*
 - (d) The expenditure is based on information about the candidate's plans, projects or needs, or those of his campaign committee, provided to the expending person by the candidate or by the candidate's agents or any officer, member or employee of the candidate's campaign committee with a view toward having the expenditure made.*

Expenditures excluded on these bases from the definition of independent expenditures are treated as in-kind contributions to the campaign with which they are coordinated.

As a participating candidate, Respondent is generally barred from accepting campaign contributions except in the limited circumstances described in A.R.S. § 16-941(A)(1), which provides in pertinent part that a participating candidate:

Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945 ...

The bulk of the evidence presented by Complainant speaks to coordination and overlapping relationships amongst the Committees and their principals. By itself, such evidence would not suggest a violation of the Act by Respondent. The alleged violation depends not upon coordination amongst these various entities and their principals, but upon coordination between such persons and Respondent's campaign. Without evidence that Respondent directed the anti-Munsil activities or was otherwise affiliated with these entities or their principals, so as to disqualify the activities from treatment as independent expenditures under A.R.S. § 16-901(14), then no charge can lie against Respondent.

The evidence presented by Complainant and obtained through inquiries made by Commission staff do not establish coordination between Respondent and ACT or AVC, the entities responsible for the anti-Munsil advocacy. Respondent has acknowledged taking part in fundraising efforts on behalf of PAF, which formerly employed both Memory and Perry.¹ But fundraising by Respondent for PAF, an organization that

¹ Memory and Perry have each submitted sworn statements averring that they left the employment of PAF on August 15, 2006; *see* Affidavit of Beau Memory (September 25, 2006) and Affidavit of Seamus Perry (September 25, 2006).

appears to engage solely in issue advocacy, is not prohibited by the Act. Nor does such fundraising for PAF indicate of the kind of coordination that might disqualify the expenditures of ACT or AVC from being treated as independent expenditures.

Commission staff also contacted Clara Cartrette, Lifestyles Editor for *The News Reporter*, to ascertain the source of the information regarding Memory published in the newspaper's March 27, 2006 edition. Ms. Cartrette told Commission staff the the "Did You Observe" column cited by Complainant is effectively a bulletin board for Whiteville community members to post announcements.² Ms. Cartrette declared that *The News Reporter* had no record of who submitted the announcement or who prepared it for publication.³ I deem the sworn statements disavowing employment or coordination by Memory with Respondent's campaign more reliable than the unattributed announcement in *The News Reporter*.

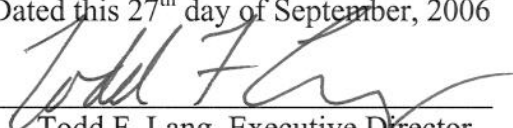
Respondent and Committees provided several detailed sworn affidavits regarding the allegations. These include affidavits by Noah Kroloff, the campaign manager for Respondent's campaign; Memory and Perry of AVC; Debra Dennis, the chairperson of the ACT; and Thomas Ziemba of the PAF. These affidavits consistently refute the allegations of the Complaint regarding coordination between the Respondent's campaign and the Committees. The Complainant sets forth a number of allegations that, if true, may constitute violations of other state laws, but those issues do not implicate the Act and are for other agencies to investigate.

No Reason to Believe Finding

For these reasons, the Executive Director recommends that the Commission find that there is no reason to believe that Respondent may have violated A.R.S. § 16-941(A)(1) and dismiss this matter under review.

Dated this 27th day of September, 2006

By:


Todd F. Lang, Executive Director

² Telephone Interview by Eric Peterson with Clara Cartrette, Lifestyles Editor, *The News Reporter* (September 27, 2006).

³ *Id.*